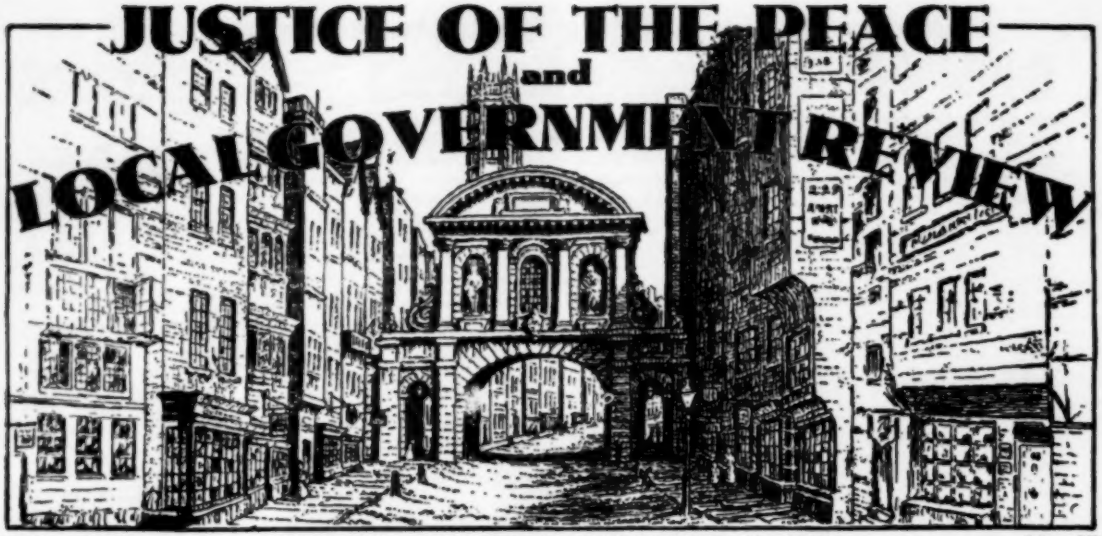

VOL. CXVI LONDON: SATURDAY, SEPTEMBER 13, 1952 No. 37

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REPORTS

Official & Classified Advertisements, etc.

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Clerk to the Justices.

Magistrates' Clerk's Office,
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Clerk and Solicitor.

Council Offices,
Chipping Sodbury,
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Justice of the Peace
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NOTES of the WEEK

Clearing the Court

The provisions of s. 37 of the Children and Young Persons Act, 1933, which enable a court to exclude the public, though not the press, while a child or young person gives evidence in any proceedings relating to an offence against decency or morality, are well known, and are sometimes the means of enabling a young witness to give evidence with far less embarrassment than would be involved in a hearing in a crowded courtroom. This is obviously in the interests of justice.

A case in which the same procedure was adopted although the witness was not a child or a young person came before Nottingham justices recently. The girl, stated to be aged seventeen, was giving evidence in a case of assault, which apparently involved indecent details, and it was at her request that at one point in her evidence the court was cleared. As a newspaper report contains some account of the evidence she then gave, it would seem that the reporters must have been allowed to remain in court.

The action of the justices seems to have been quite regular. They were not trying the case summarily, but were sitting as examining justices, and the general opinion is that by reason of the provisions of s. 19 of the Indictable Offences Act, 1848, examining justices need not sit in open court, though usually they do so. It is true that a contrary opinion has sometimes been expressed, based on later Acts, but in our opinion justices acting under the Indictable Offences Act are entitled, if they think it expedient to sit otherwise than in open court, and sometimes this course may be desirable.

When the Magistrates' Courts Act, 1952, comes into force any doubts that remain will be dispelled. Section 4 (2) is quite definite : " Examining justices shall not be obliged to sit in open court."

Clerks to Justices and the Magistrates' Courts Act

Clerks to justices, and all who have any interest in the Magistrates' Courts Act, 1952, will be glad that its coming into operation is deferred until June 1 next, so that they may have time to study its provisions, note the changes in the law and familiarize themselves with the arrangement of the sections and schedules.

It is often helpful, when a matter of this kind is in hand, to have the benefit of discussion and joint study with colleagues, and we were interested to read the following paragraph in the annual report of Mr. A. Platt, clerk to the Ashton-under-Lyne justices, in which he refers to the mass of new legislation, culminating in the Magistrates' Courts Act, and the need for keeping abreast of it :

" The magnitude of this task and the necessity for magistrates' clerks to have full knowledge of the amendments quickly and immediately the Act has come into operation, has prompted the Lancashire Justices' Clerks' Society to suggest a special school for a few days, which clerks can attend and when the numerous amendments can be fully discussed and digested."

Annual Reports of Clerks to Justices

As we have said before, the annual reports of clerks to justices are intended primarily for the information of the justices, and in many respects are of only local interest. In many such reports, however, the observations and reflections of the clerk are worthy of wider circulation, since they stimulate discussion on matters of general importance.

In his recent annual report, Mr. A. Platt, clerk to the Ashton-under-Lyne justices, calls attention to the large and increasing volume in the work of the collecting office, and he goes on :

" If short time in the cotton trade continues there will be a considerable number of applications for variation of orders to come before the court. Depressing though the cause may be, I believe that in harder times we shall have less matrimonial difficulties. Parties, and particularly the womenfolk, stick together far more in adversity than they do when times appear good."

Recording the continuance of much serious crime, Mr. Platt states that there is a disturbing increase in the number of cases that have to be committed for trial. Indeed, quarter sessions have to sit practically continuously. As to juvenile crime, that also continues at a high rate. Mr. Platt suggests that many cases now brought before the juvenile court would not have been brought twenty years ago :

" In those days, many petty offences would have been dealt with on the spot by a cuff over the ear. There would have been no appearance in court and no record of conviction. May be the reason we get so many persistent offenders is that they are brought to court in the first instance on some comparatively trivial matter and when nothing unpleasant happens to them, they lose the inherent fear of the court which thereafter ceases to have any terrors for them. It is certain that the number of more serious offences of breaking and entering by children are increasing and wherever lies the blame, it is an alarming state of affairs."

These are views from which many people will dissent. For our part, we do not think the juvenile courts nowadays are failing generally to take serious notice of juvenile crime. Surely much blame is to be imputed to want of discipline in the home and to the failure of many parents to set a good example to their children. That is certainly not the only cause of juvenile crime, but it is one of the most important causes.

Attempt to Pervert Course of Justice

A member of the public, who had removed a piece of cloth caught in a bicycle chain, was (according to a newspaper report) warned by the deputy coroner of St. Pancras, at the inquest into the death of the cyclist, that he might be prosecuted, and "not be in circulation for a matter of two years." It was stated in evidence that when the man removed the cloth he had said, "Better not let anyone see this, or he won't get any insurance." It appears therefore that he realized that he was tampering with evidence material to an insurance claim, even if he did not also realize that the torn piece of trouser cloth might be material in other judicial proceedings following the accident, *e.g.*, at a coroner's inquest. The doing of an act which has a tendency to prevent the administration of justice is an indictable misdemeanour at common law: hence probably the mention of "two years." In *R.* v. *Vreones* (1891) 55 J.P. 536, the prisoner had tampered with samples of wheat prepared for submission in arbitration proceedings before a judicial tribunal. No such proceedings took place, and the samples were not used in evidence. In the Court of Crown Cases Reserved, Lord Coleridge, C.J., held that it made no difference that the tribunal was not actually misled, or that the evidence was not actually used. As Pollock, B., put it, "So far as the prisoner was concerned, his act was complete." While we have not the full facts before us, it seems likely that the deputy coroner had in mind this doctrine, and perhaps this case.

The Late Lord Macmillan

We record with great regret the death of the Right Honourable Hugh Pattison Macmillan, Baron Macmillan of Aberfeldy, G.C.V.O., and a Lord of Appeal in Ordinary.

Lord Macmillan was outstanding as an advocate at the Parliamentary Bar and an excellent and ubiquitous Chairman of Commissions and Committees. Born on February 20, 1873, he was like so many of those who have gained high distinction in the professions, both amongst his countrymen and in wider spheres, the son of the manse being the elder son of the late Rev. Hugh Macmillan, D.D., LL.D., of Greenock.

Educated at Edinburgh University where he graduated with first class honours in philosophy in 1893 and Glasgow University (LL.B. 1896) where he was Conninghame Scholar, Macmillan became an Advocate of the Scottish Bar in 1897. Two years later he was appointed Examiner in law at Glasgow University and soon after became Editor of the *Juridical Review*. To local government readers probably the most well-known of the textbooks with which Lord Macmillan was connected was his *Local Government Law and Administration in England and Wales* of which he was Editor-in-Chief. His academic distinction was recognized by the conferment of the honorary degree of LL.D. by no less than eleven universities.

At the Parliamentary Bar Macmillan's services were greatly sought after and he frequently appeared on behalf of the Railway Companies in England and Scotland. Having taken silk in 1912 he led against the prolonged Glasgow Extension Bill and also appeared for Edinburgh in the Leith Extension Bill.

Prominent recognition of his career took place in 1924 when Mr. Ramsay MacDonald, Prime Minister in the first Labour administration, appointed him Lord Advocate for Scotland although he was independent of all political party ties. This appointment led in due course to Macmillan being created in 1930 a Lord of Appeal in Ordinary and raised to the Life Peerage. As was expected he occupied this office with great judicial distinction. The exceptionally long list of appointments to the Chairmanship of Commissions and Committees which appears in *Who's Who* indicates the extraordinary demand for Lord Macmillan's services in that capacity. These were astonishingly numerous and varied ranging from independent Chairman of the Ship-Building Industry Conferences (1928-1930) to Chairman of the Committee on Post-War Restitution of Art Treasures. Lord Macmillan was, in addition, an honorary Royal Academician, a director of the Royal Academy of Music, and a Fellow of the Society of Antiquaries.

We mourn the passing of a great and urbane jurist.

Kent Weights and Measures Department

Reports of Inspectors of Weights and Measures constantly pay tribute to the honesty of shopkeepers and others engaged in trades which bring them into contact with the Inspectors. The report of the Chief Inspector for the County of Kent is no exception. Mr. Strugnell writes: "Over eighteen thousand inspections have been made during the year. Although seven prosecutions have been taken for unjust weighing machines in only two of these cases was there an element of deliberate fraud. The figures speak for themselves and make unnecessary any emphasis as to the general honesty of the shopkeeper."

Most housewives find it convenient to have scales in the kitchen in connexion with their cooking, and sometimes they use them to check what the butcher or fishmonger sends them. There is a word of caution about this in the Kent report: "Household types of scales are, as a general rule, very unreliable and complaints of short weight based on check weighings on this type of scale sometimes prove groundless. In one case complaint was made that a purchase of fish was four ounces deficient in weight. Inquiry showed that the household scale used for the check was no less than eight ounces in error."

It seems that containers, and in particular those used for toilet preparations, are often deceptive because they are so made that there is a very material difference between the external and the internal measurements, and the purchaser often gets far less than he, or she, expected. The suggestion is made that the public would be better served and could make fairer comparisons if all containers bore a statement of the weight or measure of the article they contain.

There is a good tip for householders and others about deliveries of coal and coke. It is pointed out that scarcity and high prices are incentives to fraud and that it is well to check deliveries as far as possible, but, says the report, it is no safeguard to count the pile of empty bags after delivery because the pile may well have started with one or two before delivery commenced. "Purchasers should insist on receiving the weight ticket before delivery commences because this generally shows how many bags are to be delivered. Ten minutes spent in watching a delivery which the carter knows is under observation is time well spent."

Watered Milk

The Kent report gives an example of the way in which milk may be seriously adulterated possibly without fraudulent intention on the part of the dairyman although in fact he profits and the customer suffers.

"Small percentages of water in milk can sometimes represent large increases in quantity. An investigation concerning a sample which had five *per cent.* added water revealed that the adulteration was due to a leaky water pipe in the pasteurizing plant. Although this was a comparatively small percentage of water, investigation proved that the effect on the daily gallonage was considerable. Examination of the dairyman's books showed that for some days prior to the taking of the sample the output

of milk from the dairy was greatly in excess of the intake and, on one day, reached the remarkable figure of ninety-five gallons.

"An equally serious aspect was that the water got into the milk after the pasteurization process was complete and probably contaminated the milk. In this case the sampling served a double purpose in showing up adulteration and a fault in the installation.

"There are sometimes cases where genuine mistakes and accidents occur which result in unsatisfactory samples. It would be a grave error of judgment in such cases to accuse a producer, who may have spent many years and much money in building up a herd, of what amounts to fraud. Better results accrue by investigating the cause of the trouble and preventing a recurrence."

Covering up Fraud

Inspectors of weights and measures act in the interests of the general public and of honest traders. The public is well served by them; and it is only their due that they should receive co-operation from the public. Yet, as the Kent report shows, the very people whose interests are studied sometimes frustrate the work of the inspectors. Thus "in one case a man had delivered a number of loads of coke all of which were seriously short in weight. He had backed this up by numerous lies as to the number of bags delivered to various houses and one woman customer supported his statement when the inspector made inquiries. She later admitted that she had not even seen the coke delivered and had given the false information because she was sorry for the man. It did not appear to matter that she and her neighbours had been swindled out of about one bag in every three said to have been delivered."

It is common experience that most people dislike being mixed up in criminal proceedings, and that they are often reluctant to be the means of getting someone else into trouble however much he may deserve it. To give information that will put an end to a fraud and bring an offender to justice may, however, be a plain duty to one's neighbours, and it is not very creditable for a woman not merely to remain silent, but even to mislead those engaged on a proper inquiry.

Closing and Diversion of Footpaths

Recent statutes have tended to give power for closing and diverting public paths by order of a Minister or of a local authority subject to confirmation by a Minister, instead of by the nineteenth century judicial procedure, namely an order of quarter sessions made at the conclusion of a "trial" in forensic form. The situation thus created has been the subject of detailed comment and criticism in the Journal of the Commons, Open Spaces and Foot-paths, Preservation Society (*see* especially vol. X, No. 3 (July, 1951), pp. 101-105). As is well known, the Society has not as a rule favoured the new methods, fearing that closing might become too easy. The Society admits, however, that under the new procedure, although parish and district councils have no right of veto (as they formally had under s. 13 (1) of the Local Government Act, 1894), their right to "object" enables them to force a local inquiry by the Minister. Moreover, the new procedure has the advantage that, by means of the notices which have to be published in the *London Gazette* and the local press, and the courtesy of the Ministries of Transport and of Housing and Local Government, as well as of local authorities, in supplying information, the Society is able to obtain details of proposed closures or diversions at an early stage. They then take steps to ascertain the views of parish and district councils and of local voluntary organizations with regard to the proposals, and can make suggestions for improvements or can even oppose where necessary. Their Journal states that hundreds of cases of this kind have been dealt with during the past year, and the burden upon their staff has been substantial. This alone would be a reason (even were there not ample other reasons) for local authorities, and public spirited persons, to give better support to the Society in future, so as to meet its rising expenses.

Urban Pay Differentials

Comments on relatively high rates of pay for clerical staff in the City of London, made in a report to the Office Management Association, have some interest for national and local authorities engaged in public administration. In the civil service, London salary rates are reduced by "intermediate" differentiation in certain large cities and by a larger "provincial" differentiation in other areas, while in local government and some quasi-national employments there is an addition of a London or metropolitan allowance to some salary scale rates, and differential rates of wages on zonal bases for employees in the workman, artisan and similar classes. What is said with regard to higher pay for clerical staffs in the City of London is equally true, in principle, with regard to differentials in public administration, *viz.*, that higher salaries in urban areas are a reflection of the higher cost of travelling to and from or of living in urban areas.

Higher cost is a fact, but this fact is no exception from the many which cannot be considered in isolation from relevant factors, often, as in this case, very variable in weight according to a wide range of personal circumstances, and even of predilections, and changing conditions. Radically different mixtures of circumstances and predilections would, for instance, be separately accountable for extreme, but authentic, cases of individuals residing within a stone's throw and one hundred miles away respectively from their daily place of employment. Changing conditions are exemplified by improved, though not overwhelmingly good, prospects of progressive employment in rural areas having modified the intense pull exerted by employment in the towns when agriculture was a depressed industry. A more specific alteration which has mitigated the pull of the towns is the stronger financial position of rural areas with rateable value considerably below the national average, which have benefited from larger Exchequer Equalization Grants reaching them through credits from county councils' precepts; this has enabled rural local authorities to pay remuneration and provide conditions more competitive with those offered in urban areas, to some extent of their own volition but perhaps more as a result of impulsion, possibly not without a degree of compulsion, to conform with improvements under schemes formulated by national negotiating bodies. Alterations of circumstances with effects less easy to determine in favour of employment in rural areas are illustrated by extension of electrification, piped water supplies and television coverage, and occasional misgivings about the concentration of atomic hostilities against populous areas.

There never was and never will be a time when rates of pay and conditions of service, with or without pay differentiation, will precisely balance the administrative necessities of rural, urban or intermediate areas against the quality of staffs obtainable, nor the economic disadvantages of town life against some real or fancied social amenities. Existing differential rates in public administration certainly produce some peculiar effects in contiguous areas broken only by dotted lines to divide employment qualifying for an urban allowance from that which does not; the cash profit to an employee from a short journey into a qualifying area sometimes raises difficulties for authorities just outside, which might be met, if, as it seems, there must be differentials, by tapering amounts from maximum to zero as

the distance from the greatest urban density increases. Abolition of pay differentials would hardly be practicable in prevalent conditions, though it may be that review of some, particularly as regards border problems, would be conducive to more rational administration, and obviate one of the minor irritations sometimes evoked among employers and employees by continuance of a rule outmoded by new thoughts on old or altered circumstances.

MAGISTRATES' COURTS' COMMITTEES: AN OPPORTUNITY AND A DANGER

By A CLERK TO JUSTICES

Magistrates' Courts' Committees, established under s. 16 of the Justices of the Peace Act, 1949, have now been set up in every county and county borough and are busy preparing plans and machinery for taking up their duties on April 1, 1953. Their work can be conveniently divided into four departments—the provision of schemes of instruction for justices (s. 17); the division of counties into petty sessional divisions (s. 18); the appointment and conditions of service of justices' clerks and their staffs (s. 19); and general administrative and financial arrangements (s. 26).

It is important to bear in mind that financial matters, that is to say, the expenses of the committee; the salaries of the clerk and his staff; the provision of court accommodation and its attendant expenses—all these shall be determined by the magistrates' courts' committee after consultation with the council concerned, and therein lie both an opportunity and a danger.

It is inevitable that magistrates' courts' committees will include justices who are also members of the local authority. That is so with standing joint committees, and will be so with magistrates' courts' committees. The problem facing such justices will not always be capable of an easy solution. The interests of a magistrates' courts' committee should be primarily concerned with the administration of justice; those of a local authority are, to a greater degree, concerned with the reduction of expenditure in a sphere where expenditure is constantly rising. The councillor is answerable to his electors and must inevitably be influenced by their views in his council affairs. Local government is government by the elected representatives of the people; the magistracy and those engaged in the work of the magistracy are free from local control, owe nothing to an electoral system and regard themselves as independent agents actuated by one motive only—the better administration of justice.

It will, therefore, not be uncommon for a councillor-member of the magistrates' courts' committee to find himself on the horns of a dilemma—he will find himself in favour of something, say a new court-house, as a magistrate, and opposed to it on the ground of expense, as a councillor. Indeed, his problem is made the more acute if the magistrates' courts' committee decides in favour of something to which the local authority is opposed. At his council meeting is he to support the recommendation of the magistrates' committee of which he is a member, or is he to support the council? Is he to vote against his magistrates' committee or against his council? Whichever course he adopts makes him appear disloyal to one body or the other.

There is abundant authority for the proposition that a justice who has an interest in a case before the court is disqualified for sitting on the ground of bias. The work of a magistrates' courts' committee is so bound up with the judicial system that a comparison is not out of place. It is submitted that the only proper course that a councillor-justice, placed in the quandary referred to, can take is to declare his interest and refrain from taking part in the proceedings in one committee or the other.

It is possible that in some places a majority of the magistrates' courts' committee are also members of the local authority. In such places an acute danger exists of the committee becoming a sub-committee of the local authority, and administrative control of the courts would be vested in fact, though not in name, in the local authority. Thus, something that has been opposed for years will have been achieved, albeit unintentionally.

Let it not be thought that the suggestion of local authority control of the courts is a flight of fancy. Two recent happenings illustrate the point. First, an advertisement for an assistant to a clerk to justices contained these words, "A local award is payable if the officer is a member of a trade union which is recognized by the Trades Union Congress as an appropriate organization for local government officers (N.A.L.G.O. is such a trade union)." Here a bench of magistrates is apparently of opinion that the staff of the justices' clerk are local government officers; it may even be that they regard the clerk as being in the same category. They do not go so far as to require an officer to be a member of a trade union, but they reward him if he is one—not a closed shop perhaps, but very near it, and indicative of what might happen if the local authority influence on some magistrates' courts' committees became paramount.

Secondly, the Home Office has advised magistrates' courts' committees that it would be proper to appoint the treasurer or architect of the county or borough as an officer of the committee under para. 9 (1) of sch. 4 to the Justices of the Peace Act, 1949, or any other person provided he is an officer of the local authority. A committee comprised largely of members of the local authority advised on financial matters by an officer of that authority is surely primarily a local authority committee with a local authority outlook on its policy and activities.

It is of course open to the Secretary of State to advise similarly the appointment to the Committees of justices' clerks, but that he has not done. The result inevitably will be that the point of view of justices' clerks can only reach the committees by way of representation, protest and objection. They have no right of representation, no right of negotiation and (especially) no right of appeal except where a clerk's salary is reduced.

The danger of local authority control exists; the opportunity of rising above it also exists, at least in counties. Either magistrates should not appoint as their representatives on magistrates' courts' committees colleagues who are members of the local authority, or, if appointed, those persons should refrain from participating in matters where they have dual interests.

The situation is fraught with difficulties not easy of solution, and to pretend that there is no problem or that it is a simple matter for an individual to deal impartially with every problem that comes before him is more than credulity can stand. How it will work out in practice is being watched with interest and some apprehension.

COURTROOM ACOUSTICS

By R. H. HARBOUR

It is a truism that the fundamental purpose of speech is that it shall be heard and understood. Speech is an indispensable instrument in the administration of justice by the courts, and in proceedings where the liberty and sometimes the life of the subject are in issue no effort should be spared to ensure ideal conditions for its functioning.

The Roche Committee (para. 203) reported that many courts of summary jurisdiction suffered under the great disadvantage of out-of-date and inconvenient courthouses which made a dignified and proper procedure difficult and hampered the justices and the clerk in the discharge of their duties. The report further commented that acoustic conditions left much to be desired. These conditions, which are by no means applicable to summary courts only but also exist in many assize and quarter session courts, have for years cried aloud for improvement. In the latter courts a juryman whose hearing functions sufficiently well under better conditions may find himself prevented by the bad acoustic conditions of an antiquated courtroom from fully hearing or appreciating the evidence of the witnesses. He is most unlikely, especially if performing that duty for the first time, to muster sufficient courage to interrupt the proceedings and make known the fact that he is unable to hear all that is being said. Vital passages in the evidence may thus be lost to him, and possibly other members of the jury with him, with incalculable consequences upon the verdict.

The modernization of the many old courthouses still in use in various parts of the country is a long-term policy unlikely for economic reasons to be undertaken on anything like an adequate scale for many years. This should not preclude a short-term policy of making useful but less costly improvements in many of the existing courtrooms where the day to day business of the court is carried on. We propose to consider some of the problems arising from the bad acoustic conditions of these courtrooms and to suggest lines along which some of the less expensive improvements may possibly be made.

THE HUMAN FACTORS

The conveyance of intelligence by means of speech involves three factors: (1) speaker, (2) medium carrying the voice, (3) hearer. Of these the first and last have certain things in common in that they involve the human element, which is not present in the second. The position when applied to a courtroom is analogous in some ways to a broadcasting system, with the speaker as the transmitter and the hearer as the receiver. The air is the medium through which the sounds travel and the design, furnishings etc., of the courtroom will materially affect the sounds as they pass from speaker to hearer. Before dealing with the acoustics of the courtrooms it may be useful to consider some of the conditions under which the human elements involved are likely to yield their best results, for if the transmitting and receiving ends of the system are not giving of their best any improvement in the acoustics of the courtroom may not be fully effective.

SPEAKING AND HEARING

The advocate who practises frequently in the same courtroom will be aware of any unusual acoustic difficulties and this knowledge will help him to mitigate them to some extent. A sound training in advocacy and long experience in the practice of the art ensures the subject-matter being put before the court coherently and fluently. He is familiar not only with the courtroom but with the bench, the clerk, and many other persons whom he frequently meets there. He is sensitive yet unperturbed by the changing atmosphere, both literally and metaphorically, of the court from session to session. He is, in short, playing on the home ground. This is far from being the case with the witness who in all probability is making his first appearance in court. He may be quite unaccustomed to expressing himself in public and even the sound of his own voice in court may increase his nervousness, which is not diminished by a realization that he is shortly to be subjected to some unpleasant thing called cross-examination. The nature of the evidence may add to the existing difficulties, a thing particularly liable to happen in the case of a young witness called to give unsavoury evidence. The voice of the witness may be weak, diction poor, and delivery lacking that agreeable easiness which adds to the pleasure of listening. The stage has been reached where statutory provision requires courses of instruction to be given to justices, but it is unlikely that courses in elocution will ever be offered to witnesses. The problem is to create in court those conditions most likely to get the best out of the material available.

Our experience over many years suggests the most common fault in witnesses is the habit of dropping the voice. Many witnesses seem unable to maintain their voices at that level of volume necessary to ensure the whole of their evidence being heard. This habit of dropping the voice is largely a nervous reaction arising out of a lack of confidence in himself on the part of the witness, and the tendency of the witness to mumble arises much from the same cause. Verbal exhortation from the bench or clerk to " speak up " is not generally very effective, a fact obvious from the necessity to repeat such advice, and is undesirable for the reason that it tends to make the witness feel conspicuous. A more subtle way of giving such advice is by printing (in white or red block letters on a black background) the words: PLEASE SPEAK UP CLEARLY, and affixing it across the length of the inside ledge of the box facing the witness. This will not be visible to the court but will catch the eye of the witness as he steps into the box, and from time to time as he is giving evidence. The aim should be to maintain an atmosphere in court which dispels nervousness and creates a natural feeling of confidence. Comment upon the personal appearance or dress of the witness serves no purpose other than to create embarrassment which in turn tends to arouse resentment in the witness. We have found no evidence over the years that if allowed to sit the witness will immediately violate his oath to speak the truth, the whole truth, and nothing but the truth. If circumstances indicate this position to be desirable it is difficult to see any good reason why the witness should not be allowed to adopt it.

The need for a keen sense of hearing cannot be stressed too strongly. Hearing aids are available today but if these are not fully effective and the power to hear is no longer acute the moral obligation to give up court work should be recognized and accepted.

THE COURTROOM

The production of intelligible sound, as distinct from noise, is heard in speech and music. It is generally true to say that no room is equally satisfying for both, for the reason that their acoustic requirements differ. The acoustic planning of a concert hall, which may be used for full orchestra or large scale choral work, or solo instrument or voice, is vastly more complicated than the acoustic planning of a courtroom, which is used for speech only. In both cases, however, the acoustics will be considerably influenced by design and furnishing.

A performance of music in a hall where the acoustics are ideal for the combination of instruments playing will impress the listener as being "alive." The tonal qualities of the instruments sound good, playing is clean and buoyant, balance is excellent, and listening is easy. The same music played by the same performers in another hall may sound dull and lifeless; whilst in yet another hall the other extreme is apparent and the music, which sounds almost muddled, is further distorted by a distressing boom. The explanation lies for the most part in the amount of reverberation present. Insufficient reverberation results in a dull and lifeless performance, whilst excessive reverberation increases distortion. Music will stand a greater amount of reverberation than speech before deterioration is apparent, a fact noticeable in certain large buildings such as cathedrals where the organ tone sounds rich but the voice of the clergyman is almost unintelligible in parts of the building.

When a sound is produced the waves spread in all directions but their intensity diminishes as they spread out. If the sound waves strike some object in the course of their travel the object will reflect part of the energy, absorb part, and transmit part. The reflected part is the explanation of the phenomenon of echo. It will be apparent, therefore, that if a sound wave be produced, say, in the middle of a field where no buildings are near to reflect any part of the sound waves, reverberation, which is another name for multiple echoes, will be practically non-existent for the amount of reflection from the earth will be negligible. Such a sound will have a dull and lifeless quality. Conversely, a sound produced in a room will cause echoes to be returned from the walls, ceiling, floor and furniture. These echoes will take a certain length of time to die out after the source of the sound is stilled. The length of time taken may be such that in a rapid passage of music the echoed vibrations of one note strike the ear simultaneously with the original vibrations of the next note, thus producing a blurred or muddled effect. In the case of speech in such a room when any syllable is spoken a number of preceding syllables are still echoing round the room and these enter the ear together, with the result that it becomes difficult to understand what is being said. This "time lag" on the echoes increases with the size of the room, and such rooms are spoken of as being "very reverberant." It may be observed in parenthesis that the terms "reverberant" and "resonant" are sometimes used synonymously, although to an acoustician they have a more precise meaning.

In designing and furnishing a room for speech only it is clearly important that reverberation be kept low. The elimination of all reverberation, however, would render a room acoustically "dead" and the complete absence of any "build-up" of sound would make speaking feel rather an effort to the speaker.

A large room implies a slow utterance of speech so as to minimize the effect of reverberation on the intelligibility of what is being said.

It has been shown that sound, like light, is capable of reflection from a surface. If the surface be hard and smooth relatively little sound will be absorbed and the amount reflected will be high. Soft and absorbent materials on the other hand absorb the sound waves to a greater degree, and a relatively smaller amount of sound will be reflected. It follows, therefore, that apart from considerations of design a room with hard and smooth walls and ceiling will have greater reverberation than a room furnished with absorbent materials, and such a room will be less favourable for speech than a room so furnished.

Many of the courtrooms in use today have all the conditions inimical to good hearing. The walls are hard, flat, and bare and ceilings are too high. There is either a complete absence of soft furnishings or insufficient to have any appreciable effect upon reverberation. No attempt has been made at sound insulation to reduce nuisance arising from the intrusion of outside sounds. Assize and quarter session courtrooms are among the worst acoustic offenders, although numerous summary courtrooms are equally bad. An acoustician would urge the demolition and building of something better as the best solution in many cases, but less drastic measures must suffice in the interim period.

The human body has a relatively high sound absorption coefficient and the presence of the public in the courtroom help materially to reduce reverberation. Its use in this direction, however, is largely offset by the noise (coughing, etc.) arising from its presence. Windows should be fitted with heavy velour curtains as these, even when not drawn, help to reduce reverberation.

The extent to which it may be possible to treat the ceiling, walls and floor will be determined largely by cost. The expense of lowering the ceiling for example may be prohibitive, but if the ceiling is too high and its surface is flat some of the bad effects may be mitigated by employing coffering to break up the flat surface or having it covered with some absorbent material. The stretching of wires across a ceiling has no practical value and serves no useful purpose.

Walls should not be painted as this reduces the porosity and may increase the reflection of sound by as much as fifty *per cent.* A variety of wall treatment is available, one of the most successful being the fitting of special acoustic tiles for increasing the absorption of sound and the reduction of reverberation. These tiles consist of a kind of wall-board drilled with very small holes not much larger than a gramophone needle. A commercial product consisting of acoustic-pad sheets is also available. These have a perforated surface and they can be obtained with a facing in metal, plastic or plywood.

The less costly method of dealing with the floor would probably be the laying of a rubber carpet or covering. This increases sound absorption and helps to reduce the noise of footsteps.

The system of speech reinforcement by means of low level amplification is well worth investigation. This consists of a number of carefully placed loud-speakers working at a low level of volume and each covering a limited area. This system is capable of excellent results if specially designed to meet the acoustics of the room in which it is installed. The work should be entrusted to experts only.

The proceedings of the court are often distracted by the intrusion of noises outside the courtroom. Many of the older courthouses, erected before the days of heavy traffic on convenient sites of the day, now find themselves in busy centres of passing traffic. The walls pass relatively little sound into the courtroom, the windows and doors being the main channel of noise intrusion. The problem of providing a high degree of sound insulation cannot be considered apart from that of ventilation, as treatment of the windows generally involves some means of ensuring that they do not open directly to the air outside. The fitting of double-windows and double-doors is sometimes employed. Courts that sit in the more modern buildings erected on sites away from the busy centres are not entirely free from the liability to have their proceedings interrupted from time to time by noises of a less familiar kind than passing traffic. An air-raid warning siren mounted on the roof of the court with which we are familiar and now used to call out the fire brigade invariably suspends the proceedings of the court during the period of its operation, and to the reverberation of its cacophonic wail we have found no adequate acoustic answer. Sound insulation can cope more successfully with noises of lesser intensity, whether they emanate from passing traffic, persons wandering or

talking in the corridors, or the occasional stentorian tones wafted from adjacent police living quarters of a healthy young constable in the full flush of song in his morning bath, oblivious of the fact that the termination of his night duty coincides with the beginning of the daily round in court. The acoustics of every courtroom should be such that all whose business it may be to speak therein may do so without effort and be heard without difficulty.

SUPERVISION OF LOCAL AUTHORITIES BY THE HIGH COURT

[CONTRIBUTED]

In some ways never was brevity more the soul of wit than in these days of universal articulation, and those who are responsible for coming to decisions may rightly consider the briefest terms the most apt. In cases where individual responsibility is direct and obvious the balance of convenience is on the side of brevity, but where political considerations are present the position is otherwise. This is recognized in the modern tendency to require reasons to be stated for decisions of public bodies, *e.g.*, in the case of refusal of planning permission. The necessity to give reasons for such a decision acts by way of corrective to the fact that the planning authority is an elected body, responsible to the electors as a whole for policies. Not everywhere is this "party" administration as marked as in some, where an individual, being only one vote, is sometimes considered as of that importance.

When reasons are given, an individual is in a correspondingly better position to exercise such right of appeal as he may have, or, if no such right exists to consider whether he has any other remedy, *e.g.*, an application to the High Court for the issue of an order in the nature of one or more of the prerogative writs.

In *R.* v. *Northumberland Compensation Appeal Tribunal* [1952] 1 All E.R. 122, Mr. Shaw found himself as an individual faced with a decision of a compensation tribunal which he considered wrong. He had no right of appeal from the tribunal, and his course was to invoke the supervisory jurisdiction of the High Court over inferior tribunals, and he was successful in that *certiorari* issued to the tribunal.

In one sense, this case can be said to have reoriented the jurisdiction of the High Court over inferior tribunals exercising judicial functions or performing administrative acts other than in judicial form. To an extent it appears that whether the High Court is to have jurisdiction or not is within the power of the inferior tribunal. To be able to take cognizance the High Court obviously must have the record before it, and it was said by the Lord Chief Justice in the hearing in the King's Bench Division (from which the case went to appeal, but not on this point), that if the inferior tribunal (from which no appeal as such was possible) desired the guidance of the High Court it could make a "speaking order" setting out the reasons for its decision so that the High Court, on application to it, *e.g.*, for *certiorari*, could review the matter.

Denning, L.J., in the Court of Appeal considered the matter from another angle, *viz.*, that of a party before the inferior tribunal who had been denied justice by it. He considered the case where the inferior tribunal had not set out in its order the reasons for making it, and said that the High Court would not refrain from action in such a case merely because the applicant to it was not able to produce a speaking order. He examined what the record might consist of and said (p. 131) that the record consisted of "all those documents which are kept by the tribunal for a permanent memorial and testimony of their proceedings." In the case then before the court the application was for *certiorari* to quash and for *mandamus* to require the tribunal to decide the matter according to law. For *certiorari* evidence (by affidavit) can be given to show fraud or defect of jurisdiction (including interest) but not to show error on the face of the record. Whatever the record may consist of, it must speak for itself in that. For *mandamus* the evidence must be sufficient to show the nature of the remedy desired. Obviously the court is not impotent even if the record be scant, when *certiorari* to quash an existing record and *mandamus* to rehear according to law is applied for.

In Mr. Shaw's case the decision was not that of an elected body, but local authorities have been held in relation to certain of their functions to be subject to control by way of prerogative writs. Actions have been brought in the past in a variety of cases some of which may not be likely again, such as to compel the payment of a debt, to order a rate to be made (in order that the proceeds may satisfy a judgment debt against the authority), and to compel the use of funds to pay interest on debentures.

In s. 322 of the Public Health Act, 1936, provision is made for *mandamus* to enforce an order of the Minister of Housing and Local Government against a local authority, requiring them to perform one of their functions under the Act. As an alternative the Minister is empowered to transfer the function of the authority to himself, or to a county council if the defaulting authority is a county district council. This statutory provision apparently precludes application for *mandamus* in many cases where it might have at one time lain. But, in any case in which the Minister refuses to act, the individual is thrown back on his own remedy. In *Hewinson* v. *Cheltenham R.D.C.* (1903) *The Times*, July 8, which was an action claiming damages and an injunction to restrain an authority from managing a sewage farm so as to cause a nuisance to the plaintiff, the defendants contended that the action would not lie by reason of s. 299 of the Public Health Act, 1875, now replaced by s. 322 of the Act of 1936. That contention was overruled. The *ratio decidendi* that the statute imposing the duty provided a special and therefore exclusive remedy was not considered by the court to apply.

It is within the experience of most members and officials of local authorities that dissatisfied persons frequently write to a Minister and air their grievance. Overruling a decision of an elected local authority is no light thing to do, and a Minister is, naturally, reluctant to make inquiry into any case unless it appears to be one of sufficient importance. The High Court is likewise reluctant to do so except where grounds for the issue of an order in the nature of a prerogative writ clearly exist.

The case of *R.* v. *Prestwich Corporation, Ex parte Gandz* (1945) 109 J.P. 157 exemplifies the court's attitude. The local authority had decided to reduce the total number of hackney carriages licensed. In achieving that reduction they did not renew all the old licences, including that of the applicant to the High Court, who said that instead of dealing with the

merits of the case the authority had acted on extraneous considerations, *viz.*, a previous resolution of the council (that the number of licences for the whole of the borough be reduced from fifteen to twelve, and that a redistribution of licences be on a geographical basis), passed before they had considered the applicant's application. The High Court refused to interfere. Reference was made at the hearing to *R.* v. *Brighton Corporation* (1916) 80 J.P. 219 and the following words of Lord Reading, C.J., were quoted with approval: "The court ought to be very slow in interfering with the decisions of local authorities and this court has always taken the view that, assuming the local authority has come to a decision upon the merits of the case, without taking into account or being influenced by matters outside their proper sphere of consideration, this court should not interfere, notwithstanding that it might have arrived at a totally different conclusion." In the *Prestwich* case, at p. 158, Singleton, J., said, on the decision to reduce the number of licences: "That is something which may well be said to be considering the advantage of the borough as a whole. Certainly it is not something which is irregular. They did that, and on that they came to the conclusion that the applicants' licences ought to be cut down to three in number. That strikes the applicant as a little hard, and it may be so, but, in the absence of bad faith, ill will, or improper motive, it is impossible for the court to interfere with the judgment of the local authority in its own affairs."

It is to be noted that "the court" here was the High Court. Quite other considerations would have applied if the cab owner had exercised his right of appeal to quarter sessions against refusal of a licence. Quarter sessions would have had to deal with the application on its merits. The modern fashion is to give a right of appeal against a local authority's decisions, either to a court of law or to a Minister of the Crown, and to limit applications for prerogative writs by such a provision as that contained in para. 15 of sch. 1 to the Acquisition of Land (Authorization Procedure) Act, 1946, as to the validity of compulsory purchase orders. The fashion is also to require reasons to be given by local authorities for their decisions; such a statement may be most valuable upon an appeal to quarter sessions, to a court of summary jurisdiction, or to a Minister, though it is of little significance so far as concerns applications to the High Court for prerogative writs. It would be possible for absence of reasons (where the statute required them to be stated) to lead to *mandamus* to compel reasons, but the more obvious course, and the cheapest and ordinarily as effective, would be to appeal and use the fact of the authority's default as evidence of their wrong attitude.

Instances where a local authority is required to give reasons include disapproval of plans submitted under building bye-laws, where the obligation under s. 64 (2) (i) of the Public Health Act, 1936, is for precise reasons in terms of the Act; refusal of planning permission (appeal to Minister of Housing and Local Government); the notice to a dairyman to lead to cancellation of registration pursuant to Part I of sch. 1 to the Food and Drugs (Milk, Dairies and Artificial Cream) Act, 1950; and the notice to lead to cancellation of registration of premises used in connexion with the preparation or manufacture of preserved food pursuant to s. 14 of the Food and Drugs Act, 1938. The appeal in the last two cases is to a court of summary jurisdiction, and in the first case, though there is not strictly an appeal (as has been pointed out more than once in the *J.P. and L.G.R.*) there is a right to apply to a court of summary jurisdiction for a determination under s. 64 (3) of the Act of 1936.

In cases other than these, where appeal (or, as in s. 64 (3) of the Act of 1936, other express recourse to the courts) is not provided for against the decision, the question whether the individual has any remedy is bound up with the nature of the local authority's act. As the remedy by way of prerogative writ is a judicial remedy, the remedy is not available if the act of the authority is nothing but administrative. But the distinction between judicial and administrative is more in terms of art than in scientific fact, and political considerations may affect the position. As Alderman Peter Benenson has pointed out in so interesting a manner by his letter at p. 443, *ante*, the simplest decision may in these days be political in the party sense. The exaggerated influence of party upon local affairs partly flows from the political centralization which has been such a marked feature in this comparatively small country in the last few decades, and particularly since the 1914-1918 war. Local elections have become almost inevitably party fights (no matter by whatever name the groups of candidates call themselves), and local parties are either directly or indirectly associated with the national political parties.

All this is not to say, adopting the Alderman's example, that a decision to put a lamp in a working class district rather than in a shopping area or *vice versa* is not a decision made by proper exercise of discretion, whether it be a party decision or not. It is possible, nevertheless, and is not unknown in practice, for a political party to agree to sacrifice the smaller for the larger and, if the individual be the smaller and the party's long term policy be the larger, the act of the authority is suspect. Can it be that modern politics import a duty upon a local authority to act judicially in some at least of their (otherwise) administrative acts?

Consider other possible situations. During a period of economy, or perhaps scarcity of electricity or gas, a local authority might conceivably decide to put out of lighting altogether one or other of the areas in Alderman Benenson's example. Apart from other possible remedies in such a case by administrative means (*e.g.*, withholding of grant by the State) in this admittedly extreme case, could an individual in the dark area successfully apply for *mandamus* on the ground that the local authority was not properly acting as such and that the majority decision was in reality a party dictate? Consider another example. An authority decides that applicants of a certain religion only shall have priority for council houses. Both these examples are of administrative acts, and in the long run may suffer a political sanction if they persist when the next elections come and are not overwhelmed by some more popular appeal. But an eventual political sanction is little satisfaction for an individual who may have especially suffered, and he may reasonably consider that in such decisions the local authority has precluded itself from discretion by arbitrary decision.

In *R.* v. *Hendon R.D.C., Ex parte Chorley* (1933) 97 J.P. 210, which was an application to quash by *certiorari* a planning permission on account of bias, the granting of a planning permission was held a judicial act since it had the effect of conferring at least a contingent legal right to compensation on the applicant. In this case, the record is easily obtained. In the examples mentioned above, not even a minute book may be available. In the second example, evidence might be hard to obtain and might have to be inferred by a series of minutes refusing a number of applicants outside the class. In the absence of stated reasons, the decisions and history of prerogative writs show that the court will not presume bad reason against the authority unless the circumstantial evidence be strong, *e.g.*, to show complete impossible of discretion. Here it is necessary to admit that party politics may in fact not be behind any such decisions. Party politics perhaps fly to mind because they are often the agency dictating such extreme

decisions. The second example seems particularly far fetched in England, where the political scene has in modern times been dominated by secular and not religious thought, but, in an examination as now attempted, extremity of example is no disservice—and there are parts of the British Isles where, even today, adherence to a particular religious body can plausibly be supposed to be almost necessary to obtain a council house, or other *desideratum* resting in the discretion of the council.

A useful conclusion is given in the words of Bankes, L.J., in *R.* v. *Electricity Commissioners* (1924) 88 J.P. 13, a case concerned with the action of the Electricity Commissioners in inserting a provision in a scheme for a Joint Electricity Authority requiring the joint body to appoint two committees, and to delegate certain powers to each of those committees, the decision being that the question of the extent of delegation was for the joint body to determine as they thought fit. The applicant complained that the action of the Commissioners was a back door way of appointing two authorities instead of a joint authority. Bankes, L.J., after quoting (p. 15) the following words of Brett, L.J., in *R.* v. *Local Government Board* (1882) 47 J.P. 228: "My view of the power of prohibition at the present day is that the court should not be chary of exercising it, and that wherever the legislature entrusts to any body of persons other than the superior courts, the power of imposing an obligation upon individuals, the courts ought to exercise as widely as they can the power of controlling those bodies of persons if those persons admittedly attempt to exercise powers beyond the powers given to them by the Act of Parliament," gave his own opinion in the following words (p. 16): "On principle, and on authority, it is in my opinion open to this court to hold, and I consider that it should hold, that powers so far reaching, affecting as they do individuals as well as property, are to be exercised judicially and not ministerially."

"EPHESUS."

A CASE ON THE PUBLIC HEALTH (DRAINAGE OF TRADE PREMISES) ACT, 1937

[CONTRIBUTED]

Although there have been ministerial decisions on sections of this Act, there does not appear to be a recorded decision of the courts. It is, therefore, interesting to note that on June 20 of this year the appeal committee of the court of quarter sessions for the county of Lancaster dismissed an appeal by the Yorkshire Dyeing and Proofing Co. of Spring Vale, Middleton, against convictions at the Middleton magistrates' court for offences committed under this Act. The substance of the appeal was the claim of the appellants that they did not require the consent of the local authority to discharge from a building known as the New Dyehouse, and that consequently they were not obliged to serve a trade effluent notice on the local authority.

Before the Act of 1937, rights of discharge were often the subject of agreement between the parties. But the Act of 1937 generalized the position of industrial discharges. In future, consent of the local authority was required and, as a condition of that consent, a charge can be imposed by the local authority. Those who were discharging effluent at the passing of the Act were given a prescriptive right to continue to discharge a similar amount of effluent annually as they were discharging during the year ending on March 3, 1937, without obtaining consent and thus without payment. The intention of the Act appeared to be to limit these rights. The amount of total discharge must not be increased, the rate of flow must not be higher, the discharge must be "from that pipe into that sewer" and special provision has to be made by s. 4 (3) of the Act for a substitute pipe to be considered the same as the original pipe.

The facts of the case are these. The premises of the company existed in 1937, and it was not disputed that they had a prescriptive right to discharge from those premises into the public sewer. In 1946 they purchased further premises known as the New Dyehouse, which had previously been in other occupation as a foundry with no trade discharge. This dyehouse was adjoining the old premises and the pipeline from the dyehouse passed through the old premises into the pipe connecting to the sewer. Most of the machinery of the old premises was transferred to the new premises, but the total discharge was decreased rather than increased. One important point remained, that there still was a certain amount of discharge from the old premises into both pipes leading from the new dyehouse. There were, it should be stated, no byelaws under the Act in Middleton.

Counsel for the appellants contended that the definition of trade effluent especially "in relation to trade premises" referred to effluent which is "wholly or partly produced" on those premises, and in this case effluent was still being produced in the old premises. It was contended that s. 4 of the Act as read with s. 2 was a penal section, and therefore the expression "those premises" must not receive too narrow a construction. Reference was made to *L.N.E.R. Co.* v. *Berriman* [1946] 1 All E.R. 253 and to *West Mersea U.D.C.* v. *Fraser* [1950] 1 All E.R. at 990 where the rights of the owner of a houseboat were held not to be affected by its movability.

For the respondents attention was called to the definition in s. 343 of the Public Health Act, 1936, of the word "premises" and it was pointed out that there could not be a prescriptive right where the land on which the new dyehouse was built was not owned by the claimant within the prescribed period. Section 4 was not a penal section but a section giving prescriptive rights, and thus "those premises" had to be narrowly construed. The definition of "trade effluent" in s. 14 was merely a definition and, once it had been ascertained that the discharge was trade effluent according to the definition, then the words of the definition could not properly be imported into the section. The words "wholly or partly produced" in the definition were meant to cover cases where trade effluent was intermingled with substances which were not trade effluent. Although the pipe line passed through the "old premises" the effluent was discharged from premises which were not within the 1937 curtilage and, in fact, there might have been a separate prescriptive right at the time to discharge from these premises. Counsel made reference to the case of *Langford Property Co.* v. *Batten* [1950] 2 All E.R. at p. 1079 where it was held for the purposes of the Rent Restrictions Acts that a flat with a garage was distinct from the flat alone.

The company have requested the clerk of the peace to state a case to the High Court, so presumably in the fullness of time a decision on the particular facts will be given by the Divisional Court. In the meantime some comment might usefully be made on points affecting the Act as a whole, which are brought out by the facts of this case.

The Act intended to control the total discharge. But this was rendered virtually impossible by fixing the prescriptive year in

1937. The machinery for measuring total discharge is dependent on costly and difficult tests and, for the purposes of effective prosecutions, it would be necessary to institute uneconomic tests on the chance that the figure given by the firm concerned was incorrect. In the case in question evidence was given that the discharge had decreased and the figure given by the company was not disputed, but in other cases where the original prescriptive discharge was being exceeded it would be difficult to prove. It would be a difficult question whether, in cases where the discharge had been exceeded, a charge should be made for the excess or the whole.

It is interesting to note the roundabout procedure of the Act. If the prosecution for failure to obtain the consent of the authority is successful there is a daily penalty. Consent when sought can be given subject to conditions. One of the conditions is that the local authority can make a charge. If the trade concern are dissatisfied about the charge they can appeal to the Minister, who can presumably decide such points as whether the charge shall be retrospective. Current charges by local authorities are quite substantial and, if he could claim a prescriptive right, it would probably pay a manufacturer to bring a pipe line for some distance, so as to pass through premises with a prescriptive right, rather than to pay these charges.

R.P.C.

LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS

No. 77.

AN APPLICATION FOR A PASSPORT—A FALSE STATEMENT

A thirty-five year old shipping clerk appeared at Liverpool Magistrates' Court recently, charged with making a statement which to his knowledge was untrue for the purpose of procuring a passport, contrary to s. 36 of the Criminal Justice Act, 1925.

For the prosecution, it was stated that defendant, a married man with a four year old daughter, developed a friendship with a spinster who worked with his firm, and after a quarrel with his wife, defendant and the girl decided to go to Canada together. Defendant left his home and spent ten days with the girl in London, and submitted an application to the Passport Office at Liverpool for a joint passport for himself and his wife. In support of his application he produced his wife's birth certificate and their marriage certificate. Two photographs were also attached, one being that of defendant and the other of the girl. On this application, a passport was issued, but as a result of a communication which was received at the Passport Office, the matter was reported to the police. On July 1, 1952, defendant was seen to enter the Immigration Examination Room at the Princes Landing Stage, Liverpool, with a woman. He had booked a passage for himself and his wife on r.m.s. " Empress of Canada " due to sail that day. A police officer went to them and asked for their passports. Defendant was cautioned and told that a warrant had been obtained for his arrest for the offence set out above and he was taken into custody. He subsequently made a statement to the effect that he and the girl had decided to emigrate to Canada and, having applied to the Canadian Immigration Office for entry into Canada, he was told that as a married man it would be necessary for his wife to be medically examined. Defendant then asked the girl to take the medical examination in the name of his wife. This she did, and defendant then made the application for a joint passport in order that they might emigrate to Canada.

On behalf of the defendant, who pleaded guilty, it was stated that he had recently sent to his wife, who was expecting another child, £833, authorized her to sell his car, and arranged for his superannuation contributions to be paid to her. Defendant told the court that he did not intend originally to make a false declaration. The deception started when Canadian emigration authorities told him they must both have a medical examination.

Defendant was fined £50, and in default of payment within fourteen days, was sentenced to three months' imprisonment.

COMMENT

Section 36 of the Act of 1925 provides for a maximum penalty of two years' imprisonment and a fine of £100 for offences under the section, which are regarded as being of a very grave nature.

There can be little doubt that the defendant's action in endeavouring to make financial arrangements for his wife contributed to the lenient sentence imposed by the court.

(The writer is indebted to Mr. H. A. G. Langton, M.B.E., clerk to the Liverpool City Justices, for information in regard to this case.)

No. 78.

A NEGLIGENT CARTER

A carter appeared recently at Oldbury Magistrates' Court, charged with a contravention of s. 28 of the Town Police Clauses Act, 1847. The particulars of the charge alleged that the defendant had been at such a distance from a certain cart of which he had the care as not to have due control over the horse drawing it.

For the prosecution, it was stated that the defendant left the horse and cart of which he was the owner, unattended on a main road while making a call on a friend. The horse became frightened by the traffic on the road and bolted, travelling a considerable distance down the road before being stopped as the result of a collision between the cart and a lamp post.

The justices found that the defendant had the care of the horse and cart at the material time, and that he had neither tethered the horse in any way nor made arrangements to have the horse properly cared for while he was away. They found that by so leaving it and not being in a position to exercise proper control of it, he thereby caused danger to residents or passengers on the road. The justices convicted the defendant and imposed a fine of 20s.

COMMENT

Mr. J. E. Larkham, clerk to the Oldbury justices, to whom the writer is indebted for this report, states that charges of this nature are unusual in the Oldbury Division, which comprises a large industrial area.

Section 28 of the Act of 1847, which probably creates more offences than any other single section in an Act of Parliament now in force, provides, *inter alia*, that every person who in any street, to the danger of the residents or passengers, is at such a distance as not to have due control over an animal drawing a cart shall be guilty of an offence and may be punished by fourteen days' imprisonment or a fine of 40s. The section refers to a conviction by one justice but s. 20 (7) of the Summary Jurisdiction Act, 1879, enacted that if a case is heard before one justice the maximum monetary penalty to be inflicted shall not exceed 20s.

No. 79.

TOO MANY PASSENGERS ON BOARD SHIP

The master of a pleasure passenger steamer who was also a lifeboat coxswain appeared before the Bridlington justices recently, to answer a charge that on July 1, 1952, he, being the master of a certain passenger steamer, had on board a number of passengers greater than the number allowed by the said passenger steamer's certificate, contrary to s. 283 of the Merchant Shipping Act, 1894, and s. 22 of the Merchant Shipping Act, 1906.

Mr. William Pinkney, solicitor, of Bridlington, who prosecuted for the Minister of Transport, and to whom the writer is greatly indebted for this report, stated that the vessel was licensed to carry 144 passengers and a crew of six. On July 1, when the ship returned from an excursion to Bridlington harbour, and the passengers were checked as they left it was found that they totalled 160. The overloading of the vessel was regarded seriously by the Ministry, said the prosecutor, as the safety of passengers was involved and the life-saving apparatus which had to be provided was based on the number of passengers ships were licensed to carry.

For the defendant, who pleaded guilty, it was stated that when the passengers embarked they had to cross over another vessel to get to defendant's steamer and this made it difficult to check numbers. Defendant had no idea he was overloading.

The defendant, who had been convicted in 1946 of two similar offences and fined £5 and £10, was ordered to pay £15, and in addition £6 2s. costs.

COMMENT

Section 283 of the Act of 1894, which prohibits the receiving on board of a greater number of passengers than the number allowed by the passenger steamer's certificate, provides for a maximum penalty of £20 plus an additional fine not exceeding 5s. for every passenger above the permitted number or, if the fare of any passenger on board exceeds 5s., not exceeding double the amount of the fares of all the passengers above the number so allowed, reckoned at the highest rate of fare payable by any passenger on board.

Section 22 of the Act of 1906 enacts that if at any time a passenger steamer has on board too many passengers, the owner or master of the steamer shall, for the purposes of s. 283 of the Act of 1894 be deemed to have received those passengers on board at the place where the offence is discovered. R.L.H.

PENALTIES

Marylebone Magistrates' Court—August, 1952—stealing two pairs of socks—three months' imprisonment. August, 1952—receiving two pairs of socks—three months' imprisonment. First defendant, a twenty-three year old Irish girl, went to a multiple store and bought three pairs of socks from a twenty-five year old assistant whom she had known when she had worked there herself. The socks came to 8*s.* 11*d.* but the assistant received and rang up only 2*s.* The learned magistrate described it as a disgraceful transaction.

Marlborough Street Magistrates' Court—August, 1952—stealing a chicken, value 27*s.* 6*d.*, from his employer (two defendants)—each received conditional discharge and to pay £1 1*s.* costs. A poulterer and a fishmonger employed in the provisions department of a big store were searched in Portland Square because their clothing was bulky. Each defendant was found to have a dead chicken tied to his braces and hanging inside his trousers. Defendants each had previous good characters, and had lost their jobs.

REVIEWS

Halsbury's Statutory Instruments, Volumes 8 and 9. London: Butterworth & Co. (Publishers) Ltd. 1952. Price 29s. net per volume. Service £4 4s. a year.

With the publication in July of volumes 8 and 9, this work reaches the beginning of the letter G.

Volume 8 comprises "Explosives" and "Factories and Shops," the latter title being far the more voluminous. "Explosives" call for no more than forty-eight pages, but the Statutory Rules and Orders and Statutory Instruments within that compass are all important to those who handle or store explosives, and to public officers who have to administer the law. It is a little startling to find that the Statutory Rules and Orders which have to be considered go back so far as 1875. This suggests that there would be some public advantage in consolidating them, and perhaps cutting out dead wood: a preliminary examination of the list here published suggests that there is not a little overlapping. The greater part of the volume is taken up with "Factories and Shops." Here the enactments printed are of more general interest, since a very large proportion of the population is affected. The publishers have here not printed a chronological list covering all the instruments allocated to this title, because the sub-titles make natural breaks, and it is sufficient to print a chronological list within each sub-title. (Even so the lists are quite long enough for anyone who has to search.) And here again it is a little surprising to find that some of the Statutory Rules and Orders have remained in force for more than fifty years. We should like to think that the enterprise of the publishers, in bringing into the open the existence of some of these old Rules, would induce the Home Secretary (and the Minister of Labour and National Service, to the extent that duties have passed to him) to consolidate and modernize. Meantime, all those concerned with the administration of the law must be grateful, for having here collected, with appropriate notes and cross-references, the provisions governing the daily life of so many workpeople. The provisions in regard to shops are more modest in bulk than those dealing with factories, covering some thirty pages only, but, here again, we find provisions still in force which were made forty years ago. Throughout this volume particular value attaches both to the detailed notes and cross-references paragraph by paragraph, and to the introductory notes to each topic, setting out the statutory background and summarizing the existing provisions. Legal practitioners in industrial areas particularly, and also trade union secretaries, will find their task of advising clients or members greatly simplified, if they possess themselves of this volume.

Volume 9 stretches from "Fire Services" to "Gaming and Wagering." All the provisions about the fire service are new, going back only to 1947. Although they are available elsewhere without much difficulty, it will be convenient to have them here. They are of varying importance, some being merely local whilst others control the whole set-up of the service and the pension rights of members.

The section upon "Fisheries" deals first with international conventions and seal fishery, upon which there is more subordinate legislation than might be thought at first. The chronological list of instruments stretches from 1819 to 1951, although it should be said that some of the instruments included in the list are not printed in full, it being sufficient to set out their effect briefly in a tabular statement. After these general provisions, the four main classes are dealt with—namely white fish, herrings, whaling, and salmon and fresh water.

"Food and Drugs" is a title which is more important to a great many of our own readers. Here the Statutory Rules and Orders and Statutory Instruments begin with 1923, but, even in the comparatively short stretch of years thus covered, there have been enough instruments to fill some hundred pages. This is the sort of title where the "Service" is likely to be particularly useful, because new provisions will be coming along at almost any time.

"Forestry" and "Friendly Societies" are somewhat specialized subjects, neither of them with a great collection of statutory instruments.

"Gaming and Wagering," the last title in this volume, is a short one of twenty pages, and rather technical—the sort of thing which the ordinary legal practitioner is not likely to have at hand, unless he has upon his shelves some collection such as the present.

These two volumes have appeared soon after vols. 6 and 7, which were noticed recently, and the work is now well under way. It promises, when complete, to be so valuable that we should like to think that any local government office of any size will have a copy. The attention of the library committees of local authorities ought also to be drawn to it, since the ordinary user of a public library would often find it valuable, both for particular matters and for his general education, to have some knowledge of the statutory instruments which, in these days, form so much of the background of his daily life.

THE HOUSING CRISIS — A TIME TO FACE REALITIES

In the Brave New World of 1945-47, when the highest ideals were reckoned as the lowest permissible objectives, local authorities enjoyed or at any rate possessed a virtual monopoly in house building. Urged on by the Government of the day and with the zestful co-operation of planning departments, councils designed estates with a prodigality of lay-out equalled only by their disregard for the future cost of maintaining the tastefully devised expanses of grass forecourts, verges and other open spaces they so lavishly provided. To want to build one's own house—and to pay for it—was almost to be branded a social deviationist. Although analyses of actual housing demand revealed that most applicants were either childless or with one child only, the Ministry and some local authorities seemed infatuated with the three-bedroom parlour-type house; and as a reward for his labours, the villager, who admittedly had begun to look askance at his primitive contraption at the end of the garden, was richly endowed with two flush lavatories for his greater comfort and convenience.

That this Rake's Progress in national resources could not go on at the same pace eventually came to be acknowledged and, step by step, a greater restraint was shown in design, lay-out, and use of land, and there was more recourse to private effort.

Nevertheless, with the passing into law of the Housing Act, 1952, authorizing the payment of greatly increased subsidies on council houses, and the pressure being brought to bear on housing authorities by the Ministry of Housing and Local Government to ensure that building goes on to the limit of local capacity, the nation is apparently expected to contemplate and to welcome a further intensification of the housing programme. Yet despite the air of modest pride seeming to surround the Government on viewing this prospect, the situation may well appear much less a matter for gratification to the more

realistic local authorities and other interests concerned with the provision and maintenance of housing accommodation, and to the discerning tax- and rate-payer upon whom will fall the burden of these measures. For, of a surety, and whether it is generally appreciated or not, the nation is confronted with a major crisis in housing and, to borrow a phrase at present current in other quarters, it is time to face the facts.

What are the ingredients of this crisis? Unpalatable though they are, they may be briefly recited. At a time when a desperate shortage of food demands that not a single acre of land should be lost to agriculture; when the financial situation continues to impose an excruciating and inhibitory taxation; while the common stock of housing provision, public and private, throughout the country is well-nigh sufficient, if properly distributed, to house us all; and while outmoded or ill-conceived legislation serve in turn either to drive more reparable houses out of habitation every year than are being erected or to obstruct the private person wishing to shoulder his own housing responsibilities; then, even if not the actual aim, it is the almost inevitable consequence of national policy that the people will still go homeless and hungry while vast numbers of heavily subsidized housing estates eat into our ever-shrinking farmlands.

It is, of course, one thing to be aware of a problem, and quite another thing to find its solution, but so far as the housing situation is concerned certain facts clamour so much for recognition as to admit of no delay in seeking the remedy, whether by administrative or Parliamentary action. Indeed, if one reads the signs aright, it is not altogether beyond the bounds of possibility that a greater degree of all-party agreement might be attainable than strictly doctrinaire standpoints might suggest.

By what means may our object be achieved? By relying, surely, on five basic principles, *viz.*, by keeping existing housing accommodation in habitable condition wherever possible; making the best use of that accommodation; requiring everyone to assume housing responsibility according to his means; using workable agricultural land only as a last resort; and above all by spending public money only when necessary but then with due regard to the preservation of reasonable standards of construction and amenity.

It is commonly asserted and with little likelihood of contradiction that since the war more houses have gone out of habitable use through disrepair than have been replaced by the costly houses of today. The reason is not far to seek, for it is plainly the effect of the Rent Restriction Acts. This legalistic anachronism which, originally enacted to protect the tenant from the oppression of the landlord, now as often as not works the other way, has in innumerable cases turned the ownership of tenanted property into a liability, in that while the rent derivable remains at a level consistent with the money standards of thirty-odd years ago, necessary repairs, often enforced under the Public Health Acts, must be carried out at the prices prevailing today. The result is that as few repairs as possible are done, the property steadily deteriorates and when the tenant quits, the owner is glad to leave the premises unoccupied or alternatively the local authority condemns the property under the Housing Act. Again, the National Census has, in confirmation of everyday observation, demonstrated the fact that there is widespread under-occupation of existing housing provision in every part of the country, a state of affairs also kept in being mainly by the operation of the Rent Restriction Acts, since with the protection of those Acts inadequate use of premises does not carry with it the financial sanctions which would obtain if rents were free from control. While it is overbold to argue that a re-distribution of this vast reservoir of wasted accommodation would completely solve the housing problem overnight, there can be little doubt that a very long step in the right direction would be made.

Here the practical difficulty of devising suitable administrative machinery manifests itself and if some direct means of treatment were attempted to bring about the re-distribution of under-used accommodation, we should doubtless have, and in much greater degree, the difficulties, anomalies and wide variations of local implementation so well remembered from requisitioning days. But may we not avoid the direct approach and take our analogy from the benefit derived from the recent increase in the Bank Rate and the measures associated with it, the early response to which, by the operation of normal economic principles, has been a salutary improvement in our financial position resulting from a more prudent use of our available national resources. In the same way, the freeing or modification of rent control of tenanted accommodation, subject to such safeguards as may be considered necessary, would in a very short time ensure that available accommodation was used to the limit and at the same time encourage the landlord, by giving him a fair return for his capital investment, to keep his property in good condition and thus bring to a halt the steady wastage of the older type of property. Unquestionably, measures of this kind would constitute a drastic alteration of the Rent Restriction Acts, but they are intended as treatment for a critical national condition, and while it is not the purpose of this article to attack the Acts as such it is perhaps permissible to inquire what valid reason exists for allowing council houses to attract a full economic rent (whether paid by the tenant or the public by way of subsidy) while the unfortunate private property owner is expected, out of his own pocket, in effect to subsidize his tenant to the extent of the difference between the controlled rent and the real free rental value.

Turning to the third of our basic principles, local authority housing provision now amounts to a significant proportion of the national pool of accommodation, and for that reason alone it is of the utmost importance to make sure that the social and financial implications of the situation are kept clearly in mind. In the early post-war years the emphasis in tenancy selection was rightly on need, for practical purposes to the exclusion of all else. So much was this considered to be the sole factor that some authorities in their forms of application even refrained from inquiring the income of the applicant. The new subsidies are now normally to be at the very high rate of 13*s.* 8*d.* weekly per house, giving a sharp edge to the demand of equity that as between council house tenant and other ratepayers the burden of living should be borne proportionate to one's ability to bear it. It is no uncommon thing for the council house family, with several members working, to enjoy a household income of over £20 weekly, or even for the head of the family alone, in professional employment, to have a salary of the same kind, and it would be the height of injustice if in such cases the less prosperous occupants of private houses were called upon to subsidize these houses at all, let alone to the extent of 13*s.* 8*d.* weekly. Unwelcome though the suggestion might be and however difficult in practice to administer, if we are to prevent council house tenants from becoming a privileged class living at the expense of other ratepayers, then, wherever the means of the family warrant it, adjustments ought to be made in council house rents even, where necessary, requiring the payment of the full economic rent.

Much has been heard of the intention to amend that part of the Town and Country Planning Act dealing with development charges, and while, again, this is not the subject of this article, one can say that the unavoidable administrative delays in assessing the charges, and, of course, the charges themselves,

have led to a state of frustration among those who would be willing to solve their own housing problems and this, too, has gone far to swell the numbers on the council's waiting lists. Exemption from development charge on properties costing, say, not more than £2,500, would of a certainty stimulate a great deal of private house building with a corresponding public saving, and, moreover, this type of development is one that can best be met by utilizing the enormous number of individual building plots in the country. These plots, while amounting to a vast acreage in the aggregate, for the most part are interspersed among existing dwellings so as to be of little practical value to agriculture and in this way would cause no loss of workable agricultural land.

Even when all the foregoing measures have been allowed full play, there is little doubt that there would still be some housing demand of a kind that needed to be met by local authorities but it is suggested that this would be at such a reduced figure as could often be met, at any rate in the case of smaller estates, by building on the unduly large open spaces to be found on many post-war layouts, by making use once more of vacant building plots in the locality and finally by resort only to the least productive agricultural land. Much reduced though their responsibilities would then be, there would still be ample scope for the exercise of financial economy but without the need to sacrifice housing standards or amenity considerations.

The problem, then, is grave and distressful. It calls for an honest appraisal of unwelcome facts and the courage to take unpopular courses of action. Whether that action be administrative or by way of legislation, it would be reassuring to be able to believe that between them Parliament and the local authorities will find the honesty and the courage to tackle the job.

AGRICOLA.

NEW COMMISSIONS

DEVON COUNTY

John Mordaunt Foster, Ardtarman, Dartmouth Road, Paignton.
James Curzon Hilton, East Dyke, Higher Clovelly, Devon.
Mrs. Margaret Bernal Laville, Little Garth, Sampford Peverell, Devon.
Mrs. Dorothy Mary Phillips, Godford Land, Honiton, Devon.
Donald Henry Pollard, Foxley, Lonsdale Road, Newton Abbot, Devon.
Commander William Pope, R.N. (Retired), Coplestone House, Copleston, Crediton, Devon.
George Alfred Fiske Quinnell, M.B., Ch.B., Teign Lawn, Exeter Road, Teignmouth, Devon.
Bernard Henry Rossiter, Burton, Galmpton, Kingsbridge, Devon.
Frederick William Slade, The Square, Bradworthy, Holsworthy, Devon.
The Hon. Mrs. Helen Winifred White, Mothecombe, Holbeton, Plymouth.

FLINT COUNTY

Miss Doreen Margaret Lowther, School Bank, Iscoyd, Whitchurch, Salop.

GRAVESEND BOROUGH

Mrs. Peggy Armstrong, 170, Parrock Street, Gravesend, Kent.
Harry Newton Fletcher, Hill Glen, Park Avenue, Gravesend.

SWINDON BOROUGH

Frederick Ernest Bishop, 5, Upham Road, Swindon, Wilts.
Tom Oliver Marshman, 51, Drove Road, Swindon, Wilts.
Frederick John Hugh Winter, 96, Shrivenham Road, Swindon.

INNOVATION

Wouldn't it be a rather nice conception—
A Dissolution of Marriage Reception?
No doubt in time it'll be a matter of course
To invite guests to your Divorce.

J.P.C.

CHEESE-PARING ECONOMY

Fiscal expedients in the post-war world have been many and ingenious, but the common man may be pardoned for thinking that most of them are the products of impulsive improvisation rather than far-sighted policy. Price-increases to reduce purchases, price-cutting to stimulate demand, profit-limitation to prevent inflation and tax-adjustment to assist enterprise follow one another with bewildering rapidity; the economists and financial experts are hopelessly divided among themselves, and the ordinary citizen has long since come to the comfortable conclusion that they might as well toss up for it.

Every fresh expedient is, of course, welcomed with shrieks of enthusiasm by adherents of the faction for the time being in power within the government, and with howls of derision by its opponents; the policy announced, with all the fervency of a religious revival, on Monday is cheerfully denounced, by the same persons, the following Saturday. Both announcement and denunciation are propagated with dogmatic zeal throughout the length and breadth of the land, until some new idea is hatched in the fertile brains of the experts, only to be found addled and cast on the refuse-heap in its turn. Meanwhile the cost of living soars to greater and greater heights, while the ingenuity of the official mind is applied to new methods of compiling the price-index, making adjustments for such every-day necessities as candles and caraway-seeds, with a view to concealing (to nobody's satisfaction but their own) the plain fact that scarcely anyone can any longer live within his means.

The latest announcement of far-reaching economic reform comes from Paris, that home of financial ebullience and of good-living, in the material sense, without counting the cost. The present Prime Minister, M. Antoine Pinay, has gone in to bat, at the "save-the-franc" wicket, in the endless game which has been in progress ever since the close of the first World War; it is to be hoped that the "stone-wall" methods he proposes to adopt will be more successful than those of his predecessors whose innings have, in the past thirty years, brought the exchange rate for the national currency from the neighbourhood of twenty-five to about 1,000 to the pound.

M. Pinay is starting at the receiving end. The consumer, he says, no longer knows how and what to buy, and must therefore be re-educated. Anyone who has had the opportunity of watching the Parisian housewife at her shopping, in the busy market known to its frequenters as *Les Halles*, or in the narrow streets that rise steeply to the summit of Montmartre—anybody, that is, whose ear is attuned to the rapid flow and impassioned intonation that give to every transaction the salty tang of a debate in the Chamber of Deputies—will find this allegation surprising in the extreme. But M. Pinay has not approached the subject by any hit-or-miss method; he has made empirical tests which leave our armchair economists looking small indeed. "We took a Camembert cheese," he said, "cut it in half, and put a different price on each piece. The consumer invariably chose the more expensive half, because he thought the higher price meant better quality."

This is scarcely playing fair. One swallow, even of so succulent a morsel as half a Camembert, does not make a summer, even for the economic reformer, and the inductive method of arriving at a statistical conclusion cannot be expected to yield useful results unless the experiments run into thousands. The vision of an army of food-inspectors invading the crowded precincts of every *épicerie* in Paris, solemnly dividing the creamy richness of myriads of Camembert cheeses into two equal portions, affixing a different price-ticket on each, and lurking in the shadows to observe the result, staggers the imagination. Repellent as the picture is, one cannot help speculating on the tactics employed. Even in this country, where the purchaser is undiscriminating in his taste, and has long since learned to take and thankfully accept a microscopic cube of something described generically as "the cheese ration," conduct of this kind at the counter would be viewed with misgiving, if not actual suspicion. But in Paris, the source of good food, the haunt of the *gourmet*, what is the reaction of the shopkeeper to such desecration of a fragrant, delicious, nourishing national product like Camembert? Do the nefarious officials accomplish their invidious task with or without the acquiescence of the retailer? If against his will, by what stratagem do the cheese-mutilators escape the righteous wrath of their victims, and how many gendarmes are required in every shop to hold down the outraged *patron*, stifle his cries and protect the brutal minions of the Ministry from lynching? The alternative—that the desecration is accomplished with the complicity of the shopkeeper—is simply incredible. G. K. Chesterton, in a well-known poem, drew the contrast between the genial, open-hearted hospitality of the publican and the dry, sparing parsimony of the grocer—very much to the disadvantage of the latter; but the context shows that his observations are limited to England:

> "The righteous minds of innkeepers
> Induce them now and then
> To crack a bottle with a friend
> Or treat unmoneyed men.
> But who hath seen the Grocer
> Treat housemaids to his teas?
> Or crack a bottle of fish-sauce,
> *Or stand a man a cheese?*"

How the generous mind and the more than generous bulk of G.K.C. would have recoiled from the picture of the "wicked grocer"—and a Parisian at that—standing by as accessory to a brutal and unprovoked assault upon one of the greatest gifts that the genius of France has bestowed upon the gastronomic world!

There are also the feelings of the customer to be considered. Viewing the mangled remains she may well be tempted (if she is acquainted with her Shakespeare) to exclaim, in Gertrude's words:

> "O Hamlet! thou hast cleft my heart in twain!"

What is the gallant, emotional Frenchman—even if he is only a food-inspector—to reply? Is he merely to point coldly to the two price-tickets and answer as Hamlet did—

> "O throw away the worser part of it,
> And live the purer with the other half"?

No, the national sense of chivalry will be too strong for him; he is far more likely to burst into tears, embrace the outraged lady and rush to the Ministry to hand in his resignation. And he will be right in refusing to take any further part in such nefarious work. "I am a gentleman," we can hear him saying, as he takes his *congé*, "not an assassin."

We may trust to the good sense and faultless taste of our Gallic friends to nip this rank growth in the bud. If the practice is allowed to continue, who knows where it will end? The next thing will be that the *épicier* will be expected to "crack a bottle" of *vin ordinaire* and offer half of it as Château Latour 1929. Revolutions have broken out for less. A.L.P.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Club—*Transfer of intoxicating liquor to club servant who will sell on own behalf subject to paying rent to club for occupation of "bar"—Lawfulness of scheme.*

I seek your assistance in regard to the licensing laws in connexion with an arrangement proposed at the club if the law permits this to be done.

The bar at the club was formerly run by the professional greenkeeper and his wife on behalf of the club. This is the usual arrangement at small clubs which cannot afford to employ a steward. The club, through a committee, purchase the wines, spirits and beers and the professional and his wife would act as bar attendants as part of their duties.

In view of the Catering Wages Act the club would now have to pay the minimum wage provided by the Act to the professional and his wife for this bar work, and this the club cannot afford to do.

If permissible the club propose introducing the following arrangement :

1. The club would rent the bar to the professional or his wife (who live in part of the club house) at a rent of £x a week.

2. The club would continue to purchase wines, spirits and beers through the existing committee and would supply the professional who would pay the club at cost for all supplies delivered to him.

3. The professional or his wife would be in charge of the bar and would be entitled to retain any profits made from the bar over and above the rent of £x a week payable to the club.

Would you please let me know :

1. If this contemplated arrangement would be contrary to the provisions of the Licensing Acts and, if so, what section does it infringe.

2. If the arrangement is permissible does the club or the professional require a licence to sell under the Acts or does the club only have to conform to the existing provisions relating to registration under the Licensing Act, 1910? NIGA.

Answer.

1. The scheme seems to be of such design that when the professional has bought his stock of intoxicating liquor from the club (which, incidentally, lacks the appropriate excise licence to sell intoxicating liquor to him or to anyone else by wholesale) it will become the professional's property and nothing then seems to be in contemplation other than ordinary retail sales of intoxicating liquor by him to such people (even if restricted in class to members of the club) as desire to buy it. The sale of intoxicating liquor without a justices' licence is in contravention of s. 65 of the Licensing (Consolidation) Act, 1910, and where illegal sales of intoxicating liquor take place on the premises of a registered club, there is a ground for striking the club off the register (*ibid.*, s. 95 (1) (*d*)). The leading case of *Graff* v. *Evans* (1882) 46 J.P. 262, should be consulted, particularly the judgment of Field, J., distinguishing between the lawful supply by a club of intoxicating liquor to its members and, on the other hand, unlawful sales.

2. The suggested scheme will be lawful if the professional obtains a licence to sell intoxicating liquor at the club premises.

2.—Commercial Controls—*Iron and steel control.*

Can steel which was in stock before February 4 last when the order came into force, be used now without an I.S. authorization? Would the position be affected if it could be shown that provisional arrangements had been made before February 4 between the prospective contractors and the body requiring the work to be carried out, for the steel to be supplied and fabricated into the new building?

PIRE.

Answer.

If he is the holder of an iron and steel authorization or sub-authorization or "Form M sheets," it appears that he may use steel which he had in stock before February 4, 1952, as well as what he acquires under that document, but this will not entitle him to use such stocks if he holds no authorization.

3.—Highways—*Ploughing of public paths.*

The county council are the highway authority for rural districts and are concerned as to the position which has arisen by virtue of the National Parks and Access to the Countryside Act, 1949, and in particular, s. 56 of that Act. The effect of s. 56 (10) is, in the opinion of the county council, a saving for ancient rights of plough, the effect of s. 56 being a concession in respect of public paths which had not formerly been ploughed.

During the war certain paths were ploughed for the first time by virtue of Defence Regulation 62 (5A) and the county council are experiencing difficulty in distinguishing between rights which exist at common law by long usage and those which were exercised for the first time under the Defence Regulation in question.

If the effect of subs. (10) is as stated above and persons exercising ancient rights are not required to give the notice specified in s. 56 (2) or to reinstate under s. 56 (3), the county council are also concerned as to whether any responsibility for restoring the path after ploughing falls upon them by virtue of the liability contained in s. 47 of the Act.

Can you please advise on the following points :

1. Is it clear that a person claiming an ancient right to plough a public path is exempt from the provisions of s. 56?

2. If the answer to 1 is in the affirmative, what proof could the county council require in support of such claim and over what period should such right be substantiated—presumbably living memory would be sufficient?

3. Are the county council under any, and if so what liability by virtue of s. 47 of the National Parks and Access to the Countryside Act, 1949, to restore a public path which has been ploughed pursuant to the ancient right? Before the National Parks and Access to the Countryside Act, 1949, the path would have been trodden down by the public, but would it be held now that the highway authority cannot repair the path unless they restore it?

PING.

Answer.

1. Yes.

2. Evidence of ploughing as far back as living memory goes would be sufficient.

3. The liability is that at common law. This follows from s. 47 which applies "the rule of law whereby a highway is repairable by the inhabitants at large." The liability is the same therefore as before the Act. The standard of repair required at common law changes with circumstances and it also depends on the nature, character, and situation of the way, and the character of the operation which put it out of repair. By the time the farmer has finished his operations, the use by the public during those operations would no doubt restore the way to its usual standard or near thereto.

4.—Judgment debt—*Separate committal of two partners for same debt—Discharge of debt.*

A collector of taxes obtains judgment against A and B (partners) for £28 in respect of sch. D tax. The collector recovers part payment of £16 and now applies for a judgment summons against each partner, the sum due being shown as £12. I should be glad of your opinion on the following : On the hearing of the judgment summons if the court is satisfied that each partner has had the means to pay and has neglected or refused to do so, can A be committed to prison, say for twenty-eight days in default of payment of £12, and also B be committed to prison for twenty-eight days in default of payment of £12. If so, what is the position if A pays in full and is released from prison? Does B have to pay £12 also to secure his release? I would add that the collector states that it is impossible to divide tax jointly due, and it seems that the court is not empowered to do so. P. CINQUE.

Answer.

If A or B or a stranger pays the debt both A and B are entitled to discharge. A and B are both committed for the same debt, its payment releases both.

5.—Licensing—*Transfer application refused by licensing justices—Successful appeal to quarter sessions—Transfer granted during pendency of appeal to another person.*

We should be glad if you would give us your advice on the following point :

Early in the year the licensee of certain licensed premises gave notice and a protection order was granted by the petty sessional court to A. The next transfer sessions coincided with the general annual licensing meeting, when the licensing justices refused to grant a permanent transfer to A. After some discussion they granted a protection order to B, a director of the brewery company owning the premises.

A continued to manage the house as agent for B for some days, after which C took his place; at the adjourned brewster sessions the licensing justices granted a permanent transfer to C. A then, unknown to the brewery company, appealed to quarter sessions against the justices' refusal to grant a permanent transfer of the licence to him. Quarter sessions heard the appeal after the date of the adjourned brewster sessions and, having heard it, stated that the appeal was granted and that A was the permanent licensee. Thus we have C

granted a permanent transfer of the licence by the licensing justices and A now declared to be the permanent licensee of the premises by quarter sessions. Our view is that quarter sessions should have referred the matter back to the licensing justices, went beyond their power in declaring A to be licensee, and thus that this declaration is of no effect. A points out to the brewery that he is the licensee of the premises and so should be allowed to take control of them. B is at present in charge of them, but the brewery are not unnaturally in some doubt as to the strength of the position of each of these licensees.

We should like your views as to the effect of the declaration by quarter sessions and generally as to the present position of the licence.

We will not go into the grounds on which A was refused the permanent transfer by the licensing justices nor into the type of licence attaching to the premises, as these do not seem relevant.

NOX.

Answer.

This is a complicated situation, upon which we advise with considerable doubt.

It is clear that it was within the powers of quarter sessions to grant the transfer if it was thought necessary (Licensing (Consolidation) Act, 1910, s. 29 (4)), but it is difficult to understand from our correspondent's letter why it was thought necessary if the facts were that A had gone out of occupation of the premises and was not engaged in the management of the licensed business. On both these points he had been superseded by C.

It is no less difficult to understand from our correspondent's letter why the licensing justices granted the transfer to C during the pendency of A's appeal; for, even though the brewery company had no knowledge of the appeal, notice of it had been given to the clerk to the licensing justices within five days after their refusal to grant the transfer to A. (Licensing (Consolidation) Act, 1910, s. 29 (3)).

It may be argued that a transfer when granted (even by quarter sessions on appeal) only vests the licence in the transferee until the licence is later transferred to another person, which leads to the situation that the effect of the decision of quarter sessions was merely a reversal of the decision of licensing justices given at the general annual licensing meeting not to grant a transfer to A, without prejudice to the powers of the licensing justices (which they had in fact already exercised) to grant a transfer to another person who (in substitution for the appellant) had become "the new tenant or occupier of the premises, or the person to whom the representatives or assigns (of the previous licence holder) have, by sale or otherwise, *bona fide* conveyed or made over the interest in the premises" (*ibid.*, sch. 4).

The continuance of A's right to be the holder of the licence is dependent upon his occupation of the premises and his contractual rights to assume control of the licensed business. It is not clear from our correspondent's letter what his rights are in this connexion; but it would appear that A's present position is quite at large, removed in fact from occupation of the premises and from any control in fact of the licensed business carried on in them.

Thus we think, with much doubt, that the transfer to C by the licensing justices in March is valid. The decision of quarter sessions not having the effect of putting him into a stronger position than C, who is in occupation, but establishing merely that the licensing justices were wrong in not granting to A the transfer of the licence in February.

6.—Magistrates—*Procedure—Road traffic orders—Evidence.*

The county council have made several traffic regulation orders in pursuance of the powers conferred upon them by s. 46 (2) of the Road Traffic Act, 1930, and s. 29 of the Road and Rail Traffic Act, 1933, and I am considering whether a copy of such order certified by the clerk of the county council as being a true copy is properly admissible in evidence for the purpose of the prosecution of an alleged offence against the order. It seems to me that the answer may depend upon whether these traffic regulation orders are public documents, but I have so far been unable to find any definite authority on the point and should appreciate your opinion.

PEX.

Answer.

Yes. Such orders are public documents within s. 1 of the Evidence Act, 1845, and s. 14 of the Evidence Act, 1851.

7.—Public Health Acts—*Dangerous building—Demolition—Mortgagee in possession as owner.*

A purchased a house with financial help from a building society, who subsequently entered into possession and gave the mortgagor notice to quit, which he did. The property developed structural defects, and the mortgagees abandoned the security, but retained the deeds. After ten years empty, the property is demolished by the council as dangerous to passers by. Who is the owner liable to reimburse the council the expenditure of demolition? PEAT.

Answer.

The query does not state under what Act the council proceeded, but its terms suggest s. 75 of the Towns Improvement Clauses Act, 1847. The building society appear to be the owners within the meaning of that Act. A mortgagee in possession cannot free himself from his liabilities and responsibilities by mere abandonment; *cp. In re Prytherch, Prytherch* v. *Williams* (1889) 42 Ch.D. 590, at pp. 599, 600.

8.—Rivers (Prevention of Pollution) Act, 1951, s. 7—*River board's consent to "new discharge" of effluent—Breach of conditions.*

Under s. 7 of the Rivers (Prevention of Pollution) Act, 1951, the consent of the river board must be obtained (*inter alia*) to a "new discharge" of trade or sewage effluent to a stream: the term "new discharge" is defined in subs. (8). The river board may attach conditions to such consent (subs. (2)) and it is clear that such conditions can include the imposition of a standard of purity upon the effluent to be discharged. A person who is in breach of any such conditions is declared to be "guilty of an offence punishable under s. 2 of this Act" (subs. (14)). For a period of seven years after the passing of the Act, a river board must obtain the consent of the Minister of Housing and Local Government before instituting proceedings for a contravention of s. 2 (1) in respect of trade effluent, or any effluent from the sewage disposal or sewerage works of a local authority, but this restriction does not apply to a contravention arising only from the effluent not complying with a standard prescribed by byelaws made under s. 5 (s. 8 (2)). Your opinion is sought as to whether the provisions of s. 8 (2) apply to proceedings for a breach of conditions attached to a consent given under s. 7 to a "new discharge."

PAR.

Answer.

The proceedings for an offence will be taken under s. 7 (14) and on conviction the offence is punishable under s. 2 and s. 2 (7)-(9) will apply. Section 8 (2), however, only applies to proceedings for a contravention of s. 2 (1) and the offence under s. 7 (14) is not expressed to be a contravention of s. 2 (1) or deemed to be so. It is a separate offence. Moreover, s. 3 which refers to a contravention of s. 2 (1) is specially applied by s. 7 (15).

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